



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

A. G. Kawamura, Secretary

September 27, 2006

John J. Vlahos, Partner
Hanson, Bridgett, Marcus, Vlahos, Rudy LLP
425 Market Street, 26th Floor
San Francisco, CA 94105

Dear Mr. Vlahos:

The Department has received your letter, challenging a decision related to transportation provided by the Market Milk and Stabilization Plans (hereinafter "Stab Plans"), issued August 22, 2006. The Department issued this decision after receiving a petition from California Dairies, Inc. (hereinafter "CDI"), and thereafter taking testimony at a hearing conducted on July 6, 2006.

After evaluating your objections, the Department declines to take any action. The Department has determined that the CDI petition, and an alternative proposal presented by Crystal Creamery (hereinafter "Crystal"), were submitted within the proper confines of the law related to milk pricing, and that the subsequent hearing and decision falls within the scope initiated by the petition.

In your letter, you asserted that the alternative proposal from Crystal, a proposal that requested the inclusion of Sacramento as a deficit county, and therefore eligible for transportation credits, was not within the scope of the hearing as established by the original CDI petition. The Department disagrees.

At the call of the hearing, the Department posted a revised public hearing notice. It stated that "the hearing will consider proposals to amend the Pooling Plan and the Stab Plans in effect on July 6, 2006these include provisions for ...transportation credits (Reference Section 300.2 of the Stab Plans).... By including this section within the scope of the hearing, Crystal had the right to request the inclusion of Sacramento as a deficit county. The notice of public hearing was posted at the time of the call of the hearing and is available at:

<http://www.cdfa.ca.gov/dairy/pdf/hearings/Jan2006/RevHearingNoticeMay1206.pdf>

The Department understands the frustration resulting from Crystal's decision to submit an alternative proposal during the course of the hearing instead of bringing it forward at the pre-hearing workshop, where interested party members would have had the opportunity to discuss and clarify the proposal. Nevertheless, the



public hearing notice provided sufficient notice and opportunity to be heard on the Crystal proposal.

Furthermore, there is no statute or regulation related to milk pricing that requires an alternative proposal to be submitted prior to the day of the hearing. Rather, the Department has merely encouraged parties to submit alternative proposals for discussion at the pre-hearing workshop. In other words, the Department finds that the early submission of alternative proposals and participation in the pre-hearing workshop are not legally required prerequisites for such proposals to be considered at the hearing.

Lastly, your statement that "the Decision was based on a clearly inadequate record that did not include evidence from interested producers or competing processors" is incorrect. In fact, the Dairy Institute and CDI submitted post-hearing briefs, and both commented on this particular issue. The Department afforded all hearing witnesses an opportunity to request and submit a post hearing brief to respond to testimony brought forth, which necessarily includes the Crystal alternative proposal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kelly Krug", with a long horizontal flourish extending to the right.

Kelly Krug, Director
Division of Marketing Services